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Givens & Bell, Inc. DOCKET FILE COPY ORIGINAL

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August 25, 1997

Secretary
Federal Communications Commission
1919 M Street N.W.
Washington D.C. 20554

RE: Comments to ET Docket No. 97-157
NOTICE OF PROPOSED RULE MAKING:
Reallocation of Television Channels 60-69, the 746-806 MHz Band

Dear Sirs:

Givens & Bell, Inc., applicant for a new television station on channel 64 in
Charlottesville, VA., hereby submits the following comments in response to the
proposed reallocation of television channels 60-69. We are responding both in
regards to the specific case of our application for a new station on channel 64 at
Charlottesville, VA, and also to make general comments regarding the proposal.

Submitted by:



Sidney E. Shumate, President

Givens & Bell, Inc.

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Summary

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The Specific Case of the Channel 64 Allotment at Charlottesville, VA:

The continued existence of the existing channel 64 UHF translator at Charlottesville, VA, will prevent any use of one-quarter of the proposed public safety use spectrum in the Charlottesville vicinity. Therefore, the proposed impending reallocation of the Charlottesville channel 64 allotment would not, in this specific case, have the desired result of providing immediate additional spectrum for public safety use at 770-776 MHz.

This little-watched translator also provides a certain amount of existing, potential interference to the National Radio Astronomy Observatory (NRAO) in Green Bank, WV. This interference would be grandfathered and protected by the unintended results of this proposed rule.

Givens & Bell, Inc. (G&B) is an applicant to build a channel 64 TV station in Charlottesville, VA. In its application, G&B proposes to install an antenna array that would provide less interference toward the NRAO than the existing translator does now.

We ask the Federal Communications Commission to allow the channel 64 allotment for Charlottesville to remain. This would allow G&B to provide a second full-power commercial television service to the Charlottesville television market, and would reduce the amount of potential interference transmitted toward the NRAO. Removing this allotment would only protect the status quo, not provide the desired results.

In addition, we suggest that since the Commission did not find it necessary to assign any DTV allotments on or above channel 60 in Virginia, DC, or any surrounding states, that there is no need to delay further the waiver of the filing freeze requested by G&B.

General Comments:

1. Allotments should not be eliminated where existing translators or LPTV stations prevent the desired result of immediately freeing up spectrum for other uses.
2. Rules and procedures should be considered now to allow planned reuse of to-be-abandoned core spectrum channels and reusable existing core spectrum facilities by stations that will lose both their present channel and non-core spectrum DTV channel, LPTV stations, and new ineligible stations.
3. We suggest that the Commission should allow arrangements that allow public service and new users to make arrangements with permit holders to abandon their permits, but that the rules to prevent profiteering on the sale of construction permits should apply.

The Specific Case of the Channel 64 Allotment at Charlottesville:

BACKGROUND

Charlottesville, VA, has had an unused channel 64 allotment for decades. Several applicants have, over the years, made application to build a commercial television station on this channel. Concerns that were raised regarding possible interference to the National Radio Astronomy Observatory (NRAO) at Green Bank, WV, that the previous applicants were either unable or unwilling to solve or resolve, have resulted in the Federal Communications Commission's refusal to grant, except in one case, any construction permit for this allotment. Even the one construction permit that was granted was rescinded due to additional concerns regarding NRAO interference raised by a losing competitor for that permit. For further details, please refer to MM Docket No. 86-440.

In September of 1996, Givens & Bell, Inc. (G&B) submitted an application for a construction permit to build a television station on channel 64 in Charlottesville, VA. This application requests a waiver of the TV filing freeze, and has not yet been accepted for filing. This application provided a solution to the previous NRAO interference concerns.

This solution is based primarily upon a unique engineering solution which builds upon experience obtained from several existing nulling antenna systems. G&B, in its application, has proposed to install an antenna system consisting of an antenna specifically selected and designed for a signal null at a particular elevation and direction, in combination with a nulling antenna. This system, which uses existing, proven technology, when operating at the proposed full

power would provide less interference toward the NRAO than the existing translator does now.

In addition, this solution invokes an existing local television engineering precedent set by the Federal Communications Commission (the Commission) in granting a power increase to WVIR-TV, channel 29, the existing full-power UHF commercial television station in Charlottesville. The channel 29 power increase was granted based upon a showing that, due to a difference in the new antenna's pattern, there would be only an insignificant increase in the amount of interfering signal transmitted toward the NRAO. This detriment was offset by the significant increase in population created by the station's upgrading to 5,000 watts of effective radiated power and changing from a directional to an omnidirectional pattern.

As part of the engineering section for this application, it was noted that there is an existing 1000 watt channel 64 UHF translator in service at Charlottesville, VA. This installation translates the signal of ABC affiliate WHSV-TV, channel 3, in Harrisonburg, VA. The signal carried by this translator has to be delivered to the translator via a microwave link, as terrain shielding prevents any practical reception of the channel 3 signal in the Charlottesville area, even on top of Carter's Mountain. There are two ABC affiliate stations carried on the local cable system, which serves almost all of Charlottesville and the surrounding Albemarle county. Nielsen reports that the Charlottesville market has a 68% cable penetration. One of these stations is WHSV-TV, and the other is WRIC-TV, channel 8, which is licensed to Petersburg, VA. Due to terrain shielding by the Blue Ridge Mountains on both the east and west side of Charlottesville, almost all viewing of these two stations in the Charlottesville area is via cable, wireless cable, and, in WHSV-TV's case, the channel 64 translator.

Despite the apparent advantage of the translator, as recently as 1995, the Nielsen rating service reported that the total viewing levels for WRIC-TV in the Charlottesville market area, as defined by Nielsen's DMA, are usually double those of WHSV-TV. In this DMA the total viewership levels for WVIR-TV, the sole local commercial television station, were also reported by Nielsen to run from 5 to 30 times those of WHSV-TV. WVIR-TV commands over 64 % of the total television viewership in this market, on average, during the local evening newscasts. It can be safely inferred from these ratings that the channel 64 translator does not generally attract many viewers.

COMMENT

The above-mentioned, little-watched channel 64 translator at Charlottesville, VA provides a certain amount of existing, potential interference to the National Radio Astronomy Observatory (NRAO) in Green Bank, WV. The Commission states in paragraph 18 of this Notice, FCC 97-245, that "TV translator operations will not be required to alter or cease their operations until they actually cause interference to new DTV service or to any primary services operating in the 746-806 MHz band." Therefore, reallocating the channel 64 allotment at Charlottesville, VA, in this case, would provide additional protection to the existing translator. The removal of this allotment would protect the present situation; the present level of interference to the NRAO would continue.

In this proposal, FCC 97-157, paragraph 2, it states: "The DTV Table provides only 15 allotments for DTV stations on channels 60-69 in the continental United States." In the Sixth Report and Order, there are no DTV allotments for either channel 63, 64 or 65 in Virginia, the District of Columbia, West Virginia, Delaware, Maryland, North Carolina, or Kentucky. Therefore, the Commission's

policy of assigning as few DTV allotments as possible at or above channel 60, leaves no nearby DTV allotment that would force this translator off the air prior to the complete cessation of analog broadcasting.

The proposed full-power television station that G&B proposes would force this translator off of the air. While this may seem harsh, the builders of this translator were aware of this risk when they chose to apply to build this translator using a channel already allotted to the location of the translator. If the allotment is removed, there would be no chance of the translator being replaced with a full-power television service, as originally intended by the Commission when they allotted channel 64 to Charlottesville.

Reallocating the existing channel 64 allotment at Charlottesville would not have the desired effect of immediately freeing up the channel 64 spectrum, 770-776 MHz, for the proposed new public safety services. In fact, the existence of the channel 64 translator at Charlottesville would be grandfathered and protected by the unintended results of this proposed rule. The continued existence of this translator would prevent any use of one-quarter of the proposed public safety use spectrum in the Charlottesville vicinity. Therefore, the proposed impending reallocation of the Charlottesville channel 64 television allotment would not, in this specific case, have the desired result of providing immediate additional spectrum for public safety use at 770-776 MHz. Either the existing translator, or the station to be built by G&B, will be using the channel 64 spectrum at Charlottesville. Therefore, either way, this spectrum will not be made available until the end of analog television broadcasting occurs.

We ask that the Commission allow the channel 64 allotment for Charlottesville to remain. This would allow G&B to provide a second full-power commercial

television service to the Charlottesville television market, and would reduce the amount of potential interference transmitted toward the NRAO. Removing this allotment would only protect the status quo, and, therefore, not provide the desired results.

In addition, we suggest that since the Commission did not find it necessary to assign any DTV allotments on or above channel 60 in Virginia, DC, or any surrounding states, that there is no need to delay further the waiver of the filing freeze requested by G&B.

General Comments:

1. The Commission should check for locations where eliminating the channel. 60-65 allotments would not have the desired effect of freeing up spectrum for other uses, due to existing translators that will not be forced off the air by new DTV stations. These allotments should not be eliminated if there is a possibility that a full service facility would replace the existing translators and other secondary service operations.
2. In many locations, there are existing television stations whose present channel lies within the core spectrum, who will find or have already determined that their new DTV allotment will be more advantageous for future DTV broadcasting than taking the option to move the DTV transmission to the original channel when analog television broadcasting ceases. These stations will be left with surplus, existing, serviceable transmitting facilities that could be converted to DTV at far less cost than building new facilities.

There will also be television stations who will have both their present analog channel and their initial DTV allotment in the core spectrum, who will take the option to move the DTV signal to the original channel when analog television broadcasting ceases. These stations may also have surplus facilities with reusable antennas, transmission line, and transmitter power amplifier systems in place.

At the same time, there may exist in these same locations full service stations that will lose both their existing analog channel and their DTV channel, due to neither being located in the core spectrum.

There also may be in these same locations secondary services, such as LPTV stations and translators, that will also be forced to leave the air when analog broadcasting ceases.

And there may be new analog television stations who were not eligible for a DTV allotment.

We suggest that the commission should consider whether, as part of this rulemaking, or another rulemaking, rules and procedures might be put in place that would facilitate the reuse of such surplus facilities, by allowing frozen-out full-service facilities and LPTV stations to apply in advance for DTV facilities to be located on these abandoned core spectrum channels.

This would not only enable cost savings by the new applicants, it would also save them time and effort and help provide them a future. It would allow the stations who are being forced to abandon the equipment an opportunity to recoup their costs by selling or renting same to the new users. It may be particularly advantageous in small markets, where for financial reasons the conversion to DTV will often be delayed. The sooner these rules and procedures are in place,

the better, as is would allow all of the involved stations to make better plans for the future.

Where such arrangements can be made, facilities that will be transferring should be allowed to continue operation if they are located on channel 60-69 now, and do not interfere with new DTV stations. If they will interfere, there should be great flexibility in allowing temporary accommodations to be made to bridge the gap.

3. Finally, with regards to allowing new public safety and new service licensees to make arrangements with permit holders for ceasing planned broadcast operations, we suggest that the Commission should allow this on a case-by-case basis. With regards to any monetary compensation, the same rules that are in place regarding the prevention of profiteering on the sale of construction permits should also apply.